

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

JACK EARL VANCE,

Petitioner,

v.

Civil Action No. 2:09CV104
Criminal Action No. 2:05CR43
(Judge Maxwell)

UNITED STATES OF AMERICA,

Respondent.

ORDER

On June 25, 2010, Magistrate Judge James E. Seibert filed his Report and Recommendation [Civ. Doc. 7 / Crim. Doc. 195], wherein the petitioner was directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within fourteen (14) days after being served with a copy of the Report and Recommendation. No objections to the Magistrate Judge's Report and Recommendation have been filed. Accordingly, the Court will review the Magistrate's Report and Recommendation for clear error.¹

Upon examination of the report from the Magistrate Judge, it appears to the Court that the issues raised by the petitioner in his Motion to Vacate, which was filed pursuant to 28 U.S.C. § 2255, were thoroughly considered by Magistrate Judge Seibert in his Report and Recommendation. Moreover, the Court, upon a review for clear error, is of the opinion that the Report and Recommendation accurately reflects the law applicable to the facts and

¹The failure of a party to object to a Report and Recommendation waives the party's right to appeal from a judgment of this Court based thereon and, additionally, relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See *Wells v. Shriners Hospital*, 109 F.3d 198, 199-200 (4th Cir. 1997); *Thomas v. Arn*, 474 U.S. 140, 148-153 (1985).

circumstances before the Court in this action. Therefore, it is

ORDERED that Magistrate Judge Seibert's Report and Recommendation [Civ. Doc. 7 / Crim. Doc. 195] be, and the same hereby is, accepted and that this action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that the petitioner's § 2255 Motion [Civ. Doc. 1 / Crim. Doc. 177] be, and the same hereby is, **DENIED**. It is further

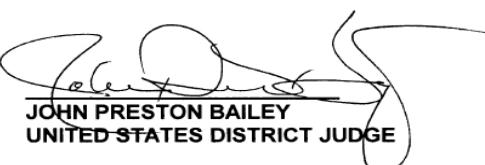
ORDERED that the petitioner's request for an evidentiary hearing, and request for the vacation of his conviction and for retrial with excluded evidence shall be, and the same hereby are, **DENIED**. It is further

ORDERED that the above-styled action be, and the same hereby is, **DISMISSED with prejudice** and **STRICKEN** from the docket of this Court. It is further

ORDERED that, pursuant to Rule 11(a) of the Rules Governing Section 2254 and Section 2255 Cases, this Court declines to issue a certificate of appealability as the petitioner has not made a substantial showing of a denial of a constitutional right. 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003) (in order to satisfy § 2253(c), a petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

The Clerk is directed to transmit true copies of this Order to the petitioner and all counsel of record.

DATED: August 16, 2010.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE